

**SEMINOLE COUNTY GOVERNMENT
AGENDA MEMORANDUM**

SUBJECT: Sobik's of Airport Blvd., Inc.

DEPARTMENT: County Attorney's Office

DIVISION: Litigation

AUTHORIZED BY: Lola Pfeil

CONTACT: Sharon Sharrer

EXT: 7257

MOTION/RECOMMENDATION:

A business damage claim has been filed by Sobik's of Airport Blvd., Inc. relating to Parcel Numbers 102/702 on the County Road 15 project. Sobik's operates a business on the site and has claimed \$223,168.00 in business damages exclusive of statutory interest, attorney's fees and cost reimbursements. Request authorization to make a counteroffer based on the report of the County's business damage expert opining the amount of business damages to be \$34,400.00. Judge Simmons.

District 5 Brenda Carey

Bob McMillan

BACKGROUND:

see attached

STAFF RECOMMENDATION:

Staff recommends the Board gives authorization to make a counteroffer based on the report of the County's business damage expert opining the amount of business damages to be \$34,400.00.

ATTACHMENTS:

1. Sobik's of Airport Blvd., Inc.

Additionally Reviewed By: No additional reviews



COUNTY ATTORNEY'S OFFICE
MEMORANDUM

To: Board of County Commissioners

Through: Matthew G. Minter, Deputy County Attorney

From: David G. Shields, Assistant County Attorney
Ext. 5736

Concur: Pam Hastings, Administrative Manager/Public Works Department
David V. Nichols, P.E., Principal Engineer/Engineering Division

D.V.N. 1-11-08

Date: January 14, 2008

Subject: Authorization to Respond to Business Damage Claim
County Road 15
Parcel Nos. 102/702
Property owner: Sobik's of Airport Blvd., Inc.
Seminole County v. Sobik's of Airport Blvd., Inc., et al
Case No. 2007-CA-826-13-K

This Memorandum requests authorization by the Board of County Commissioners ("BCC") to respond to the business damage claim of Sobik's of Airport Blvd., Inc. ("Sobik's") on County Road 15. Sobik's operates a business on the site. By statute, the business owner is required to provide its business damage claim within 180 days of the County's initial notice of the taking and the County is required to accept or reject the claim or submit a counteroffer within 120 days after receipt of the claim. Both sides agreed to an extension of these deadlines. Therefore, by agreement between counsel, Sobik's provided its claim on August 31, 2007, and the County's response is due by February 12, 2008.

I. PROPERTY

A. Location Data

The subject property is located at the northeast side of County Road 15 (Monroe Road) and State Road 46 in a portion of unincorporated Seminole County. A location map is attached as Exhibit A and a parcel sketch as Exhibit B.

B. Street Address

The street address is 105 Monroe Road, Sanford, FL.

C. Description

The parent tract consists of 29,935 square feet and is improved with a restaurant.

II AUTHORITY TO ACQUIRE

The BCC adopted Resolution No. 2006-R-114 on May 9, 2006, authorizing the acquisition of Parcel Nos. 102/702 and found that the County Road 15 improvement project is necessary, serves a public purpose and is in the best interests of the citizens of Seminole County. The Order of Take occurred on May 25, 2007, with title to Parcel No. 102 and the right to temporary use of Parcel No. 702 vesting in Seminole County on June 5, 2007, the date of the good faith deposit.

III ACQUISITION/REMAINDER

The proposed fee acquisition consists of 2,927 square feet and is a rectangle shaped parcel off the subject's frontage on County Road 15. The temporary construction easement (TCE) contains 648 square feet and is also rectangular and will be used to blend the new right-of-way with the access driveway on the remainder property.

IV APPRAISED VALUES

The County's initial appraised value of Parcel Nos. 102/702 was \$172,100.00 (\$163,200.00 for the fee and \$8,900.00 for the TCE). The County's appraisal was prepared by Florida Realty Analysts, Inc., and was approved by the County's MAI designated staff appraiser. The appraisal was updated for the order of taking hearing and it opined the values at \$175,200.00 (\$166,100.00 for the fee and \$9,100.00 for the TCE). The appraisal report provides a plan to cure the damages to the remainder that the take would otherwise cause. The appraisal report only appraises the land, improvements, and possible severance damages. The appraisal report does not encompass business damages. The County has retained a separate expert, a certified public accountant, to evaluate Sobik's business damage claim.

To date the owner has not provided the County with an appraisal report appraising the land, improvements and possible severance damages.

V BUSINESS DAMAGES

At the time of the taking, Sobik's business had been in operation at the site since 2000, and it therefore qualifies for business damages.

A. County's Business Damage Report

The County has retained a certified public accountant as its expert on the business damage claim. The expert has examined Sobik's supporting documents

provided with the claim and opines business damage to be \$34,400.00 in a report received by the County on January 9, 2008.

B. Sobik's Business Damage Report

Sobik's business damage assessment was prepared by its owner, John Sobik utilizing calculations prepared by Morgenstern Phifer & Messina, P.A. Sobik's business damages claim is \$223,168.00. The nature and extent of Sobik's claimed business damages include a permanent loss of parking spaces, a constricted site, temporary loss during the time the cure is implemented, loss of visibility of signage and a general reduction in the desirability of the site for the business.

In his report, the County's expert notes that the owner did not provide any background, assumptions or rationale as to how the owner determined its permanent business damages. The County's expert does recognize a loss during the implementation of the cure to the owner's property and for 30 days thereafter, which is the basis for the \$34,400.00 amount.

VII ATTORNEY FEES

Attorney fees for business damage claims are based on the difference between the final judgment or settlement on the claim and the amount of the County's initial counteroffer. If there is no timely counteroffer, the counteroffer is deemed to be zero dollars. The same percentage attorney fee schedule is applied to this difference as is applied to the monetary benefits obtained as to land, improvements and damages. Therefore, it is important for the expert to review the claim and any and all supporting documents and recommend an appropriate response so as to minimize any claim for attorney fees.

VIII RATIONALE AND COST CONTROL

The recommended settlement amount is the minimum that the County will likely have to pay the owner for business damages based on the report of the County's own expert. The amount also appears reasonably sufficient given the owner has not provided any support for permanent damages to the remainder property.

The Florida Statutes force the County to respond to the business damage claim quickly or risk significant additional exposure for attorney fees. This memorandum is intended only to address the statutory requirement for responding to the business damage claim of the business tenant and to protect the County on the matter of attorney fees.

VIII RECOMMENDATION

County staff recommends that the BCC authorize the County Attorney's Office to make a counteroffer in response to Sobik's business damage claim in the amount of \$34,400.00 based on the report of the County's business damage expert. This amount will cover only business damages and is to be exclusive of statutory interest, statutory

attorney's fees, cost reimbursements and any other compensation or damage which might be due Sobik's.

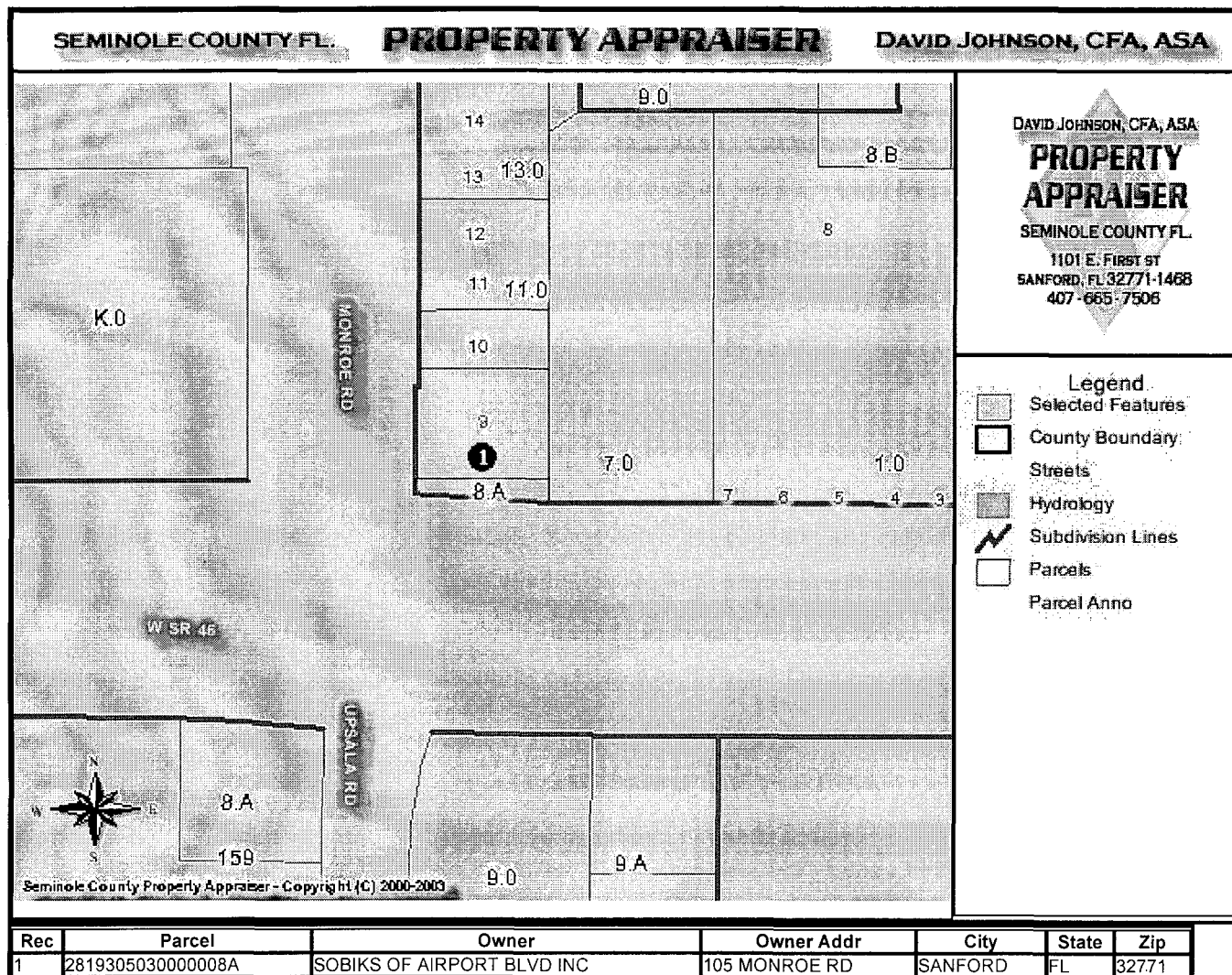
DGS/dre

Attachments

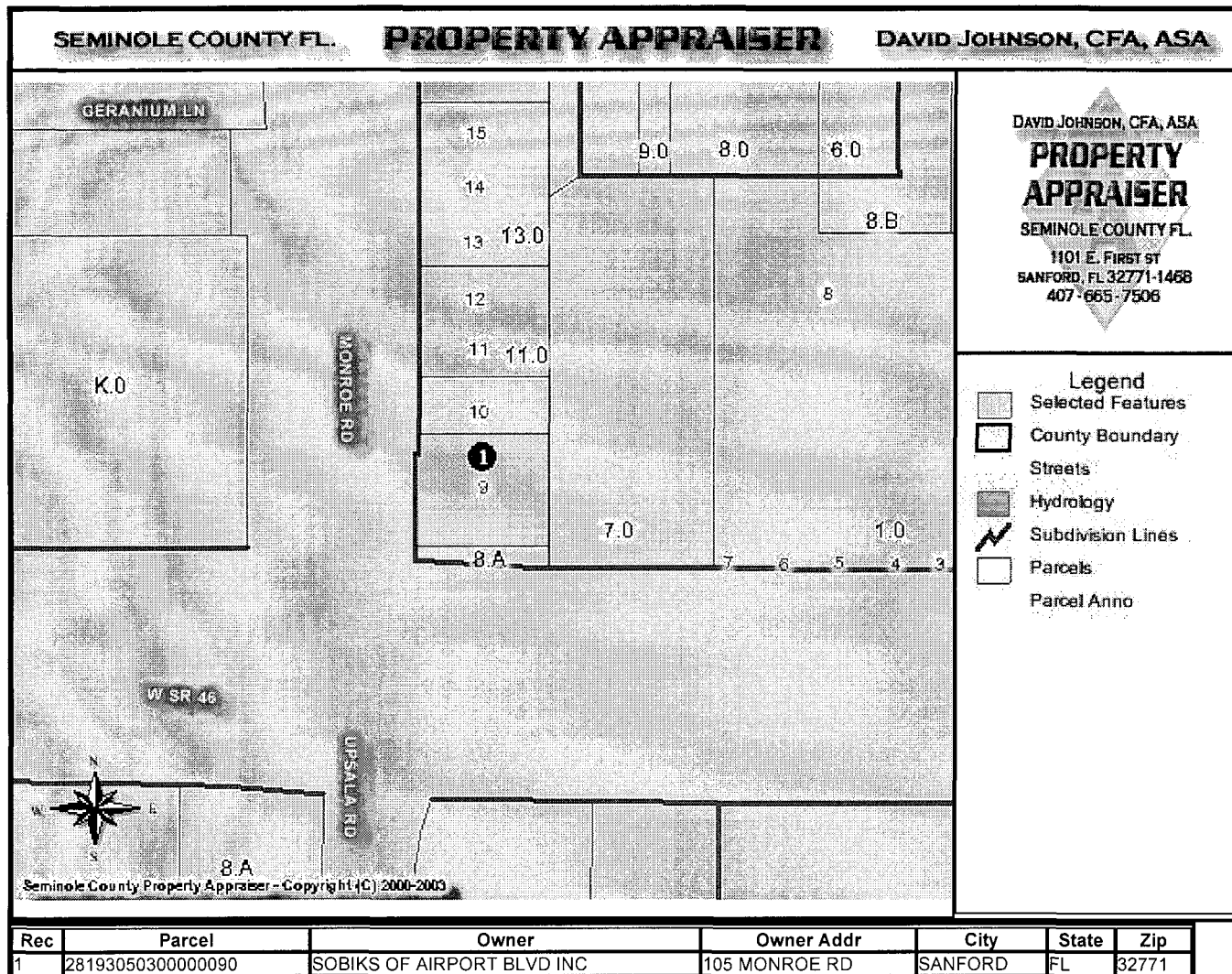
Exhibit A – Location map

Exhibit B – Parcel Sketch

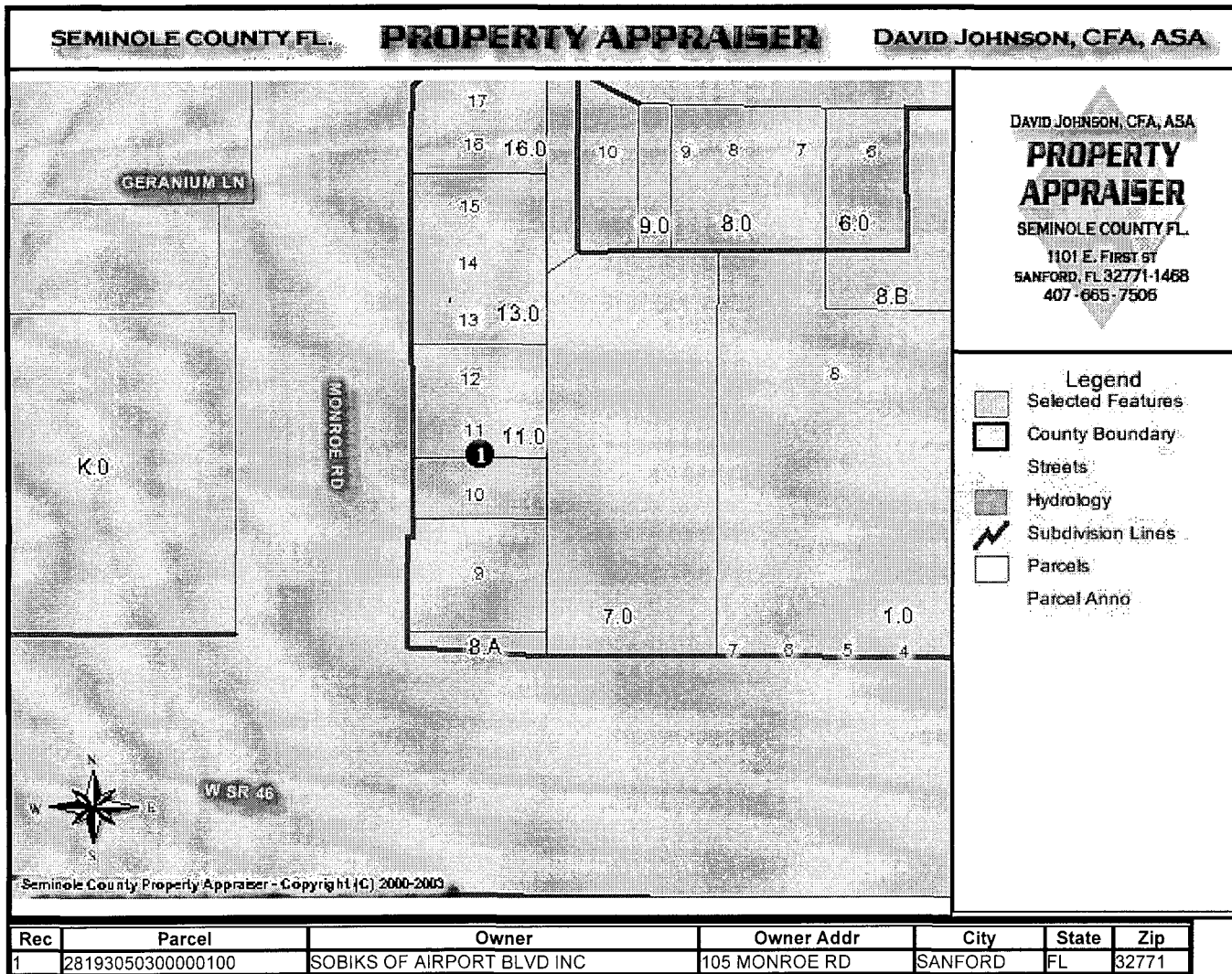
P:\Users\Dedge\My Documents\Mem\Agenda Item Cr 15 Sobik's Business Damage Response.Doc



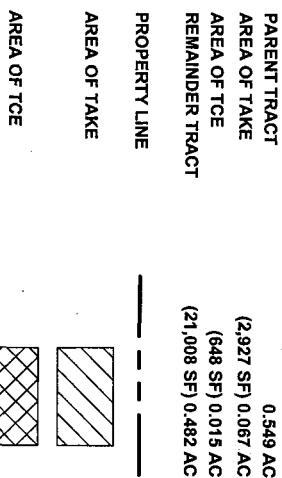
COMPOSITE EXHIBIT A



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A vertical scale bar with markings at 15, 0, 15, and 30 feet. The word "Scale" is written vertically to the left of the bar, and "feet" is written vertically to the right of the bar.



PARCEL 102/702
C.R. 15 / MONROE ROAD
SEMINOLE CO., FLORIDA

SCALE AS SHOWN

DRAWN: PEP APPROVED: JMS
 CHECKED: DCD APP. DATE: 08/01/06

EXHIBIT B

SHEET:2
PROJECT NUMBER
A060352.00
FILE NAME: per102-102.dwg

gai consultants
EB 9915
618 East South Street
Orlando, Florida 32801
407-423-8398

